

# Asbestos Programs Branch Update

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## Special Legislative Edition



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As mentioned in the January – April 2001 Asbestos Programs Branch Update, the Asbestos Program has created a Special Legislative Edition Asbestos Programs Branch Update commemorating the 77th Texas Legislative Session.

This Legislative Session was especially important to the Asbestos Program due to number of bills that were introduced in both the House and Senate, and the number of bills that passed. In the House, five bills were introduced, and in the Senate, three bills were introduced; however, two of the Senate bills mirrored two of the House Bills.

The bills and a short synopsis of their relevance are as follows:

### House

- HB 1971 – stops permitting unsafe work practices
- HB 1279 – repeal of the Resilient Floor Covering Institute guidelines (same as SB 674)
- HB 2844 – exemption of demolition or renovation projects from NESHAP
- HB 1278 – requires surveys before issuing permits (same as SB 509)
- HB 1927 – regulates the installation of asbestos

### Senate

- SB 674 – repeal of the Resilient Floor Covering Institute guidelines (same as HB 1279)
- SB 509 – requires surveys before issuing permits (same as HB 1278)
- SB 1357 – not collecting fees for schools conducting Resilient Floor Covering Institute guidelines removal

The outcome of these bills was the passing of four major laws:

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1. SB 509 requires asbestos surveys prior to issuing demolition and/or renovation permits (for permits issued after January 1, 2002);

2. HB 1927 prohibits the installation of asbestos materials in public and

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commercial buildings, unless there is no alternative;

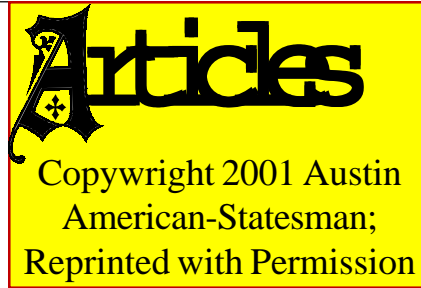
3. HB 1279 (as amended) expands the Asbestos Program's ability to enforce infractions of the Resilient Floor Covering Institute guidelines; and

4. HB 2844 allows cities to test new asbestos control methods approved by the EPA during demolition.

Many people have requested copies of the newspaper articles and editorials that prompted the 77th Texas Legislature's interest in asbestos issues. This Special Legislative Issue reprints the numerous articles written by **Kevin Carmody** and editorials related to asbestos that were published in the Austin American-Statesman earlier this year.

Due to space constraints, the articles and the editorials have been edited for content, but if you would like a complete copy of all Mr. Carmody's articles and the editorials related to the 77<sup>th</sup> Legislature, please feel free to contact the Asbestos Program at 512-834-6610 or toll free in the State of Texas as 1-800-572-5548.

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***Nearly 90 percent of asbestos removal jobs in Central Texas cities are violating state and federal safety laws, repeatedly exposing thousands of construction workers to dangerous levels of the deadly mineral, an Austin American-Statesman analysis shows.***

Across Austin's boomtown landscape, for example, at least 1,645 of the renovation and demolition projects that were issued city building permits during the 12-month period ending Sept. 30 likely disturbed asbestos, the analysis showed. But according to state records, only 55 commercial projects and 89 governmental jobs used required asbestos removal methods, including sealed work areas and respirators.

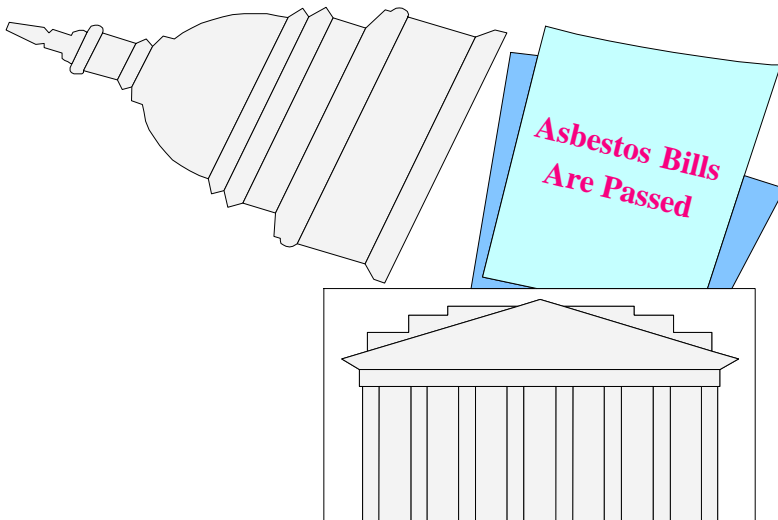
The problem extends statewide. The American-Statesman's analysis indicates that 81 percent of asbestos removals in Dallas and 63 percent in Houston are likely violating safety laws. San Antonio, the only major Texas city with a building ordinance designed to reduce illegal asbestos work, showed no likely violations because the number of legally reported asbestos removals exceeded what the analysis conservatively projected as necessary.

The analysis used city building permits and information provided by licensed asbestos consultants to establish a conservative estimate of the number of renovation and demolition projects likely to disturb asbestos in each city. That data was compared with the notifications of legal asbestos removals received by the Texas Department of Health for the same period.

The Health Department, which regulates asbestos removal projects, is poised to announce its own random survey of job sites showing nearly 80 percent were done illegally — with little chance of being detected.

Day laborers, mostly immigrants, are the most likely to disturb asbestos-laden building materials because of the tasks they're assigned. They face the heaviest exposure and the greatest risk of developing asbestos-related diseases, medical experts say. But significant risk extends to craftsmen, such as carpenters or plumbers, who often work nearby.

Between 1900 and 1980, asbestos-related diseases, including lung-scarring asbestosis and a variety of cancers such as mesothelioma, killed at least 100,000 U.S. residents, including many World War II-era shipyard workers. These diseases, which often take 20 years or more to surface, continue to kill an estimated 10,000 each year, and those ill today include construction, maintenance and custodial workers.



## Failure to do surveys

As the Health Department's own advisory board has warned for years, it's now clear that the vast majority of building owners or contractors — out of real or feigned ignorance — don't survey before starting renovation projects. And state inspectors, because they were primarily visiting job sites that were reporting asbestos removal projects, were missing most of the illegal jobs.

In a random survey of 28 Central Texas projects last spring, state inspectors found only two building owners had conducted the required survey, and illegal removals were occurring at 11 of the 13 sites where inspectors were able to test for asbestos.

The American-Statesman's analysis of nine Central Texas cities found the rate of illegal asbestos removals ranged from 69 percent in Waco to 98 percent in Round Rock, where only three buildings — two of them elementary schools — reported conducting regulated asbestos removals during the year ended Sept. 30.

Overall, the analysis found 2,648 renovation and demolition projects would have disturbed asbestos, but only 291 projects in those cities notified the Health Department that proper precautions were being taken. On each of those 2,357 illegal projects, depending on its size, anywhere from a couple to dozens of workers likely would have breathed asbestos.



*Jack Millner was in his early 50s when he lost the energy to fish and started napping a lot, barely mustering enough stamina to show up for work as a union ironworker.*

After a two-day home painting project dragged on for six weeks, Millner's wife, Carolyn, wondered if the athletic man she

married had aged overnight. It turned out the Austin man had breathed enough asbestos, some of it disturbed by other construction workers, to develop lung-scarring asbestosis.

Millner, now 61, suspects the levels of asbestos he inhaled were relatively low compared to those inhaled by day laborers, mostly Mexicans, who are being used to illegally strip asbestos from buildings during renovation and demolition projects.

Whether done with criminal intent or out of ignorance, the skirting of laws that protect workers during asbestos removal is a common occurrence, according to day laborers who find construction work in Central Texas for \$7 to \$10 an hour.

"The risk to workers is enormous," said Dr. Stephen Levin, medical director of the Mount Sinai-Irving J. Selikoff Center for Occupational and Environmental Medicine in New York. "Even exposures lasting less than one month, if sufficiently intense, can result in deaths from asbestosis 20 or more years after the onset of exposure."



*The encounter happened four years ago, but Robert Lake swears he can remember every word he told the two top officials of the Texas Health Department's asbestos program.*

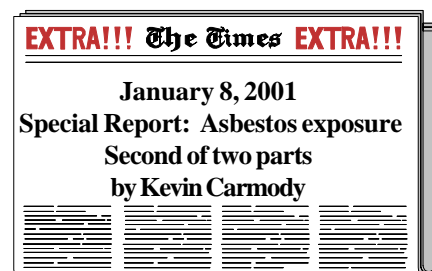
"I said: 'Fellas, stop trying so hard to nail the people who are trying to follow the asbestos regulations, the ones who are telling you they're doing these removal jobs,'" recalled Lake, owner of Olmos Abatement Inc., the Austin area's oldest asbestos removal company.

"Instead of just visiting our jobs and looking for picky little violations, why don't you follow the Dumpsters to the other job sites you don't know about, go up to

the supervisors and ask: 'May I see your asbestos survey?'"

The Health Department's response, developed during the past six months and to be formally announced this month, is to redirect its 19 inspectors to spend roughly half their field time checking complaints and randomly visiting construction sites, either by looking for construction debris or checking city building permits. The rest of their time will still be spent on visits to abatement jobs that filed the required notice and to schools.

Texas' program was already missing, although barely, its EPA-assigned quota for visits to 40 percent of the 5,000-plus abatement jobs reported annually. Department officials acknowledge that the results of their Dumpster initiative suggest the actual number of asbestos removal sites that need policing could be 25,000, with 20,000 of those probably illegal.



*San Antonio's asbestos consultants and contractors are a lot busier than they used to be. That's just part of the evidence that an 18-month-old city law is slashing the number of illegal asbestos removals.*

The city won't issue permits for the renovation or demolition of commercial buildings unless, with a few exceptions, the owners prove they've complied with state and federal law by having a licensed consultant survey for asbestos.

Texas Department of Health officials and others believe such ordinances are the best and least expensive way to fix gaping holes in the state's efforts to police asbestos removal.

Random inspections by the Health Department and an Austin American-Statesman analysis indicate that nearly 80 per-

cent to 90 percent of removal projects in Central Texas and perhaps statewide have been done illegally, endangering thousands of construction workers with little chance that those responsible will be caught.

“Across the nation there is virtually no enforcement of the survey requirement,” said Brent Kynoch, head of the Maryland-based Environmental Information Association, an organization of regulators, academics and asbestos abatement contractors, consultants and trainers. “The solution is not to create new regulations, but to enforce the existing regulations through the building permit process.”

Survey checks educate building owners who are truly ignorant of the requirements and make it harder for building owners and contractors to feign ignorance of the laws they are breaking.

Most people now caught violating the state regulations say they didn’t know what was required, and it’s hard for inspectors to prove otherwise.

San Antonio’s City Council adopted the survey-check ordinance in 1999 in exchange for the Health Department waiving penalties it was set to impose for 13 violations of asbestos notification laws on city-owned buildings.

A legislative mandate may be the Health Department’s best option, given the resistance the department has encountered when it has asked cities, including Austin, to voluntarily check asbestos surveys.

Building officials in several smaller Central Texas cities said that doing survey checks would not put an unreasonable burden on their staffs.

Some officials believe it would be best if the directive came from the Legislature because local initiatives could trigger a backlash from building owners who, particularly in smaller cities, will take their complaints about delays and added costs to elected officials.

Even if the Legislature mandated survey checks, some gaps would remain. Most counties don’t require building permits

for many types of projects, so owners of many buildings in unincorporated areas would not be subject to permit checks.

However, it’s not uncommon for building owners to believe incorrectly that they’re following the law because they’ve had an environmental site assessment, a different type of inspection that often includes a superficial asbestos survey.

“These surveys are very minimal, taking samples from easily accessible areas, and they don’t meet the Health Department standards,” said Rick Orr, a licensed asbestos consultant with HVJ Associates. “But building owners, when asked, will say they have the required asbestos survey.”



*In Texas, the voices pleading loudest for stiffer enforcement of asbestos safety laws include licensed asbestos contractors and consultants. In New York, Ohio, California and other states, dozens of their less ethical counterparts are headed to federal prison for rip ‘n’ run removals on thousands of buildings.*

It’s not that bogus abatement work doesn’t happen in Texas, contractors and state officials say, although they are unable to cite one criminal prosecution in the state involving a licensed removal contractor or consultant.

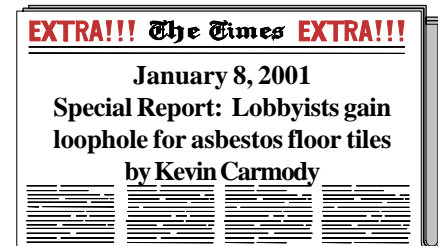
Texas currently appears to have a more fundamental problem: Commercial building owners routinely fail to check for asbestos before starting renovation or demolition projects.

Although the results might be the same — unprotected workers are exposed to the dangerous fibers either way — solving the current problem would drastically increase the number of projects done by licensed contractors and, in turn, could lead to more fraudulent abatement jobs,

some prosecutors and industry representatives suspect.

Texas inspectors, usually by following up tips, have uncovered some troubling cases. They’ve fined three training schools — one at that time operated by a member of the Health Department’s asbestos advisory committee — for issuing invalid licenses to removal workers. But only the case of Houston businessman Eric Ho has resulted in federal criminal charges, based in part on allegations that he knew his building contained asbestos before unprotected workers started tearing it down.

The Health Department could try to refer more cases to federal prosecutors, especially if its random inspections uncover licensed asbestos contractors doing rip ‘n’ run jobs. Successful federal prosecutions usually require gross violations or evidence that the owner or contractor knowingly exposed workers, and building those cases is hard for state inspectors.



*Industry lobbyists often have a hand in writing regulatory bills that the Texas Legislature approves. But state health officials contend that the U.S. flooring industry may be the only one that gets to rewrite Texas health regulations without any review by lawmakers, regulators or the public.*

The result is yet another gap in the state’s system of protecting workers from asbestos, one that Texas Health Department officials have long recognized and have little power to fix.

At the behest of the flooring makers’ trade group, the Legislature in 1991 exempted asbestos flooring from the strict rules governing removal of other asbestos building materials. The Legislature specifically allowed — as an alternative



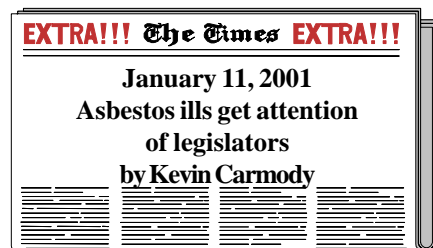
to protective clothing, respirators and air testing — the use of an industry-designed procedure in which flooring materials are wetted and pried up to limit breakage and the release of asbestos fibers.

The trade group's guidelines for using that procedure effectively became a state regulation.

The trade group — Maryland-based Resilient Floor Coverings Institute — has since modified those guidelines several times, most recently in 1998 after the Health Department decided to crack down on contractors who used strong solvents to remove asbestos floor adhesives or who otherwise violated the guidelines, department officials said.

The institute argues it's misleading to say the guidelines were changed regarding solvents, because the original procedures did allow use of a wax stripper, which should be considered a solvent.

The constitutionality of the exemption is now at issue in a lawsuit filed in district court in Austin by a group of asbestos abatement contractors who say the industry's guideline changes have produced inconsistent enforcement.



**Key lawmakers in the Texas Legislature say they are committed to fixing gaps in the state's enforcement of laws intended to protect workers from asbestos exposure, either through legislation this session or changes in Texas Department of Health practices.**

"I don't know if the civil penalties the Health Department can impose for violations are a sufficient deterrent," said state Sen. Mike Moncrief, D-Fort Worth, who was among several committee or caucus leaders who pledged this week to try to fix the problems identified in an Austin American-Statesman special report Sunday and Monday.

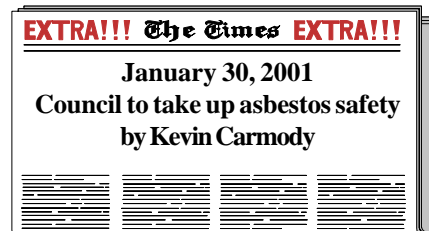
Moncrief, chairman of the Senate committee that oversees the Health Department, said he has instructed the committee's staff to examine the issue and identify solutions that would have a good chance of being enacted.

State Rep. Garnet Coleman, D-Houston, vice chairman of the House health committee, said he plans to introduce a bill that would direct Texas cities to follow building permit procedures similar to those in use in San Antonio.

State Sen. Eddie Lucio Jr., D-Brownsville, former Hispanic Caucus chairman, said he would support Coleman's bill on the Senate side and called on the leadership of both parties to help end what he considers to be "criminal acts."

State Sen. Mario Gallegos Jr., D-Houston, chairman of the Hispanic Caucus and a member of two Senate committees with authority over such matters, said his commitment to finding a fix stems in part from personal experience. His father, a Houston firefighter, died in 1990 of mesothelioma, a cancer caused by asbestos exposure. He likely encountered asbestos fibers when entering fire-damaged buildings.

Several legislators said the support of the Texas Municipal League, which generally opposes unfunded mandates on local governments, would be critical in whether the San Antonio approach has a chance of being enacted statewide.

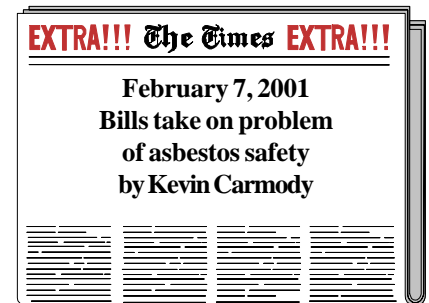


**The Austin City Council likely will take a first step toward protecting construction workers from asbestos exposure on illegal renovation and demolition projects, opting not to wait for action promised by key state legislators.**

A City Council directive, which council members say is likely to pass by consensus on Thursday, will give the city manager 30 days to evaluate procedures San Antonio has used to slash the number of

illegal asbestos jobs. It also instructs the manager to assess the costs and recommend whether Austin should use San Antonio's method, which involves building permit requirements, or a similar alternative.

Several state legislators say they are considering introducing bills to help plug gaps in the state's enforcement of asbestos safety laws.



**Texas legislators have introduced several measures intended to plug gaps in the state's enforcement of asbestos safety laws, drawing on recommendations from the acting Texas health commissioner and the findings of an Austin American-Statesman special report.**

Two House bills by Rep. Garnet F. Coleman, D-Houston, would enlist cities' help in assuring that buildings are inspected for asbestos before they are renovated or demolished and would repeal an exemption for the removal of asbestos flooring. An identical version of the inspection bill has been filed in the Senate by Mike Moncrief, D-Fort Worth.

The bills mirror recommendations in a Texas Department of Health staff report that Dr. Charles Bell, the acting health commissioner, sent to lawmakers Jan. 15.

The inspection bills filed in the House and Senate would prohibit cities or counties from issuing building permits for the renovation or demolition of public buildings unless the owners prove they have had the building surveyed for asbestos, as required under state and federal law. Details of the requirement, including any possible penalties for municipalities that don't comply, will

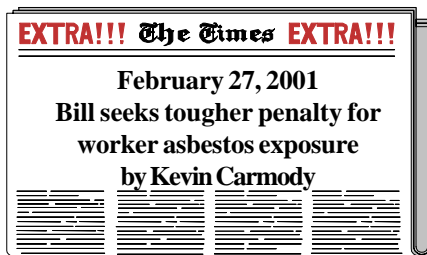
be hammered out once the bills are assigned to committees, legislative aides said.

The bills' authors say they are not aware of any organized opposition and they expect their colleagues to pass the matter. The Texas League of United Latin American Citizens plans to support its passage, said Executive Director Vincent Ramos, and the Texas Municipal League has said it won't stand in the way.

However, the House bill that would repeal special rules governing asbestos flooring is already facing opposition from the Resilient Floor Covering Institute, a Maryland-based organization of flooring manufacturers.

Health Department officials say it has become increasingly difficult to take action against companies that carelessly remove tile and likely expose workers and building occupants to asbestos levels greater than deemed acceptable. But Cissy Ellis, an institute lobbyist with Fulbright & Jaworski, said the rules should be fine-tuned, not thrown out, if the Health Department can prove where problems exist.

Institute lobbyists and allies, including the representative of a West Texas school district, have already visited lawmakers and distributed a three-page statement defending the guidelines. They also have a powerful supporter in Sen. Ken Armbrister, D-Victoria, who says the guidelines have saved money for his school districts.



*Texas employers could face up to two years in jail for knowingly exposing workers to hazards such as asbestos, under a bill introduced in the Legislature.*

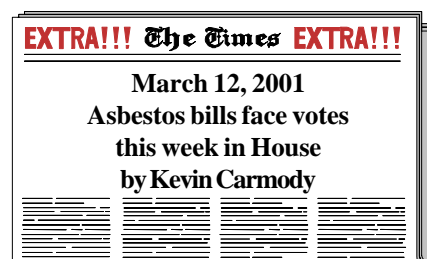
State Rep. Domingo Garcia, D-Dallas, said the bill is intended to make it easier for district attorneys to bring felony charges against employers who, for the sake of

profit, permit a variety of work conditions that could cause serious injury, illness or death. If a worker dies, the maximum penalty rises to 10 years in prison.

Garcia said he has become increasingly concerned about the failure of some employers to provide workers with basic safety equipment while doing dangerous tasks on construction sites, and he was persuaded to take action by an Austin American-Statesman report revealing that thousands of Texas workers are regularly being endangered by illegal asbestos removal projects.

Texas employers have been prosecuted for workplace disasters under the state's deadly conduct statute, but it is too narrow to be effective in most cases, Garcia said. Federal prosecutors in Houston recently won the felony conviction of a building owner who used unprotected workers to remove asbestos, but it was the first such prosecution in Texas.

The Texas Department of Health welcomed the bill, one of several introduced with the intent of filling the gaps in the state's enforcement of asbestos safety laws.



*Two bills intended to better protect workers and the public from asbestos hazards could clear committee this week and reach the full House, and a compromise appears possible on a third bill that would tighten rules for removing asbestos floor covering.*

Rep. Garnet Coleman, D-Houston, said he will ask the House Public Health Committee to swiftly approve bills that would bar contractors from installing products containing asbestos in public and commercial buildings, and require cities to verify that such build-

ings have been inspected for asbestos before receiving permits for renovation or demolition.

The two bills drew mostly praise during a recent committee hearing in which an Environmental Protection Agency official explained that U.S. imports of asbestos materials doubled between 1989 and 1998.

Rep. Charlie Geren, R-Fort Worth, said he introduced the bill restricting new asbestos use at the request of Fort Worth school officials, who testified that they've spent millions to remove asbestos from schools but have difficulty keeping contractors from using new building materials with asbestos. Violating the ban would cost a contractor \$10,000 a day.

Coleman's survey-check bill is intended to make sure building owners have structures inspected for asbestos and take the required safety precautions. Coleman also said he will seek funding this session to give the Texas Department of Health more inspectors to enforce the rules.

The most contentious bill would end an exemption that allows asbestos flooring to be removed without sealing the work area or providing air testing and respirators for workers.

Coleman said he is now satisfied that the industry-designed process, in which flooring is pried up carefully to limit the release of fibers, is safe when done properly. The problem, he said, is that too many people abuse the exemption by carelessly ripping up the flooring.

Representatives of the Resilient Floor Covering Institute, which designed the process, testified they would be willing to have penalties doubled to \$10,000 a day and make it easier for the health department to fine violators. Coleman said he plans to draft a substitute bill that will tighten the rules instead of ending the exemption and may limit the institute's ability, under current law, to alter state rules on flooring removal.

In the Senate, a companion to the flooring bill, authored by Sen. Gonzalo Barrientos, D-Austin, has been referred to the Business and Commerce Committee, headed by Sen. David Sibley, R-Waco.

Sibley last week rejected a request by Barrientos to transfer the bill to the Senate health committee, where it might have gotten a friendlier reception. No hearings have been set in the Senate.



*Austin leaders voted Thursday to use building permits as a weapon against improper asbestos removal and also made the city the first in Texas to bar installation of the deadly material in most buildings.*

City Council members unanimously approved the ordinance, aimed at protecting workers, after a brief public hearing that included endorsements from the region's construction industry associations, including the 450-member Austin chapter of Associated General Contractors.

The ordinance will require owners of most public or commercial buildings to prove they've had the structure inspected by a licensed asbestos consultant before the city will issue a renovation or demolition permit. It sets a fine of \$2,000 per day for either installing asbestos materials in a commercial building or failing to get a required survey.

City building officials will notify state Health Department inspectors if a survey shows a building needs a licensed asbestos contractor to safely remove the asbestos.

Asbestos surveys cost \$250 to \$500 for a small project and \$5,000 to \$10,000 for a 100,000-square-foot building, while a 30-story building might run \$25,000.

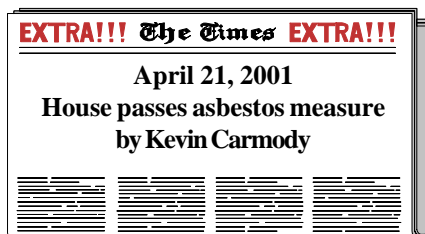
The Austin ordinance will take effect Aug. 31, five months earlier than state mandates would.

### The ordinance

Requires asbestos inspection before most commercial buildings get renovation or demolition permit.

Bars installation of asbestos materials in most commercial buildings.

Sets fines of up to \$2,000 per day for violations.



*The House on Friday approved and sent to the governor a bill that would require cities to protect worker health by verifying that buildings are inspected before asbestos is disturbed.*

The bill, passed by the Senate on a 24-3 vote last month, cleared the House without debate or dissent.

Gov. Rick Perry's decision on whether the measure becomes law will be based on a staff review that may not be completed until May 2, said spokesman Gene Acuña. Vetoes are rare on legislation that has broad bipartisan support and would not boost taxes.

Intended to help state health officials better enforce existing laws, the bill would prohibit cities from issuing building permits for renovation or demolition of most commercial structures unless the owner proves there was an asbestos inspection. Austin officials adopted a similar requirement last month.



*The House on Thursday approved a bill that would give the Texas Department of Health additional powers to investigate and penalize companies that use unsafe methods to remove asbestos floor tile.*

The bill, sponsored by Houston Democrat Garnet Coleman, passed on voice vote without debate. After final approval today, it will head to the Senate, where Sen. Gonzalo Barrientos, D-Austin, agreed to push the measure.

The bill represents a compromise reached with representatives of the nation's makers of floor covering. Those companies objected to the original bill because it would have halted the use of an industry-designed process for removing asbestos floor tile that is exempt from normal safeguards such as air monitoring.

The compromise maintained the exemption but doubles the penalty, to \$10,000 per day, for those who abuse the exemption by carelessly breaking the tile and releasing the microscopic fibers, which can cause cancer or the lung-scarring disease asbestosis. It also makes it easier for the Health Department to penalize violators, in part by eliminating the requirement that it prove a violation was intentional.

Also Thursday, the Senate Business and Commerce Committee approved and sent to the full Senate a bill that would bar materials containing asbestos from being used in the construction or remodeling of most publicly owned buildings. That bill by Rep. Charlie Geren, R-Fort Worth, has passed the House.



*Gov. Rick Perry has signed legislation that will require cities to better protect worker health by verifying that buildings are inspected before asbestos is disturbed.*

Intended to help state health officials better enforce existing laws, the bill signed into law late Thursday will prohibit cities from issuing building permits for renovation or demolition of most commercial structures unless the owner



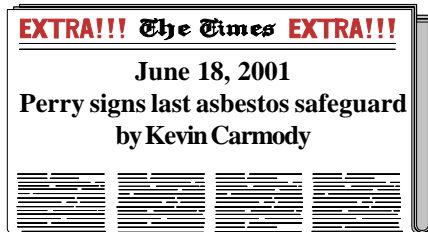
proves an asbestos inspection has been conducted.

Other bills that appear on track for adoption would bar installation of asbestos materials and give state officials more authority to levy fines for the improper removal of asbestos flooring.



*The Texas Senate approved and sent to the governor on Wednesday a House bill that would remove the \$5,000 cap on how much the Texas Department of Health can fine contractors who violate standards for removing floor coverings with asbestos.*

The bill also would make it easier for the Health Department to levy fines against those who endanger workers by carelessly removing asbestos flooring.



*Gov. Rick Perry has signed a bill that tightens regulations on asbestos floors, completing a legislative package that should protect thousands of Texas workers now illegally exposed to dangerous levels of the lung-damaging mineral.*

The new law makes it easier for the Texas Department of Health to investigate and fine companies that unsafely remove asbestos flooring. Together with legislation the governor approved last month — requiring cities to use building permits as a weapon against illegal asbestos removal — it makes Texas a leader on asbestos safeguards and ends years of frustration for occupational health advocates.

Praise for the new laws also came from the Mexican government, whose citizens working in Texas are among those most frequently put in harm's way. A statement

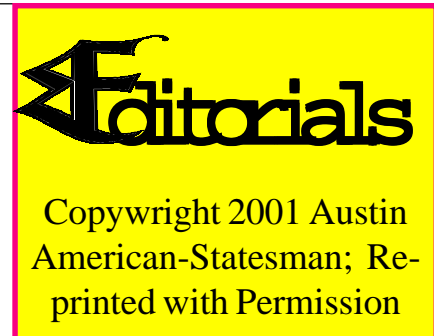
issued by the consulate general of Mexico in Austin called the legislation "a very positive measure."

On May 28, Perry signed legislation by Rep. Charlie Geren, R-Fort Worth, that bars the installation of asbestos materials in public buildings. A 1989 federal ban on most uses of asbestos was overturned in 1991, and school officials complain they've spent millions to remove asbestos safely, only to have renovation contractors reinstall ceiling tiles, floor covering and other products that contain asbestos.

The new law that addresses asbestos flooring raises the penalty for improper removal to \$10,000 per violation per day from a maximum of \$5,000 per case.

The top priority for health officials was a law signed May 3 that will require cities to withhold renovation or demolition permits for most commercial buildings unless the owner proves the structure has been properly inspected for asbestos.

A budget rider by Coleman will give the Health Department more money for asbestos program staff if, as a result of increased workload, the fees it collects exceed budget projections. When asbestos is removed from most commercial buildings, the owner must notify the Health Department and pay a fee. The Health Department in recent months has changed its enforcement strategy, which had primarily sent its 19 inspectors to locations reporting an asbestos removal project. Inspectors are now stopping to randomly check some of the renovation and demolition projects they spot while driving to scheduled inspections.



**Don't let them get away with murder.**

That's a plea for lawmakers to better protect the public from health and environmental abuses committed in the name of profit.

Lawmakers meet in a climate of bureaucracy bashing and anti-government rhetoric. Small government is in. Regulation is out.

But the need to protect the public from the reckless pursuit of profit remains acute. A few news reports make the point.

Lobbyists for flooring manufacturers write the regulations governing asbestos removal in Texas, with little regard for public health.

The industry lobby pushed through weak regulations, with a major cost-saving loophole, with "absolutely no input from the public," in the words of one state health regulator. Most asbestos-removal projects in Central Texas are done illegally, Carmody reported.

The public's voice is often muffled by the amplified cries of lobbyists for big interests. Lawmakers need to listen hard for that voice and take a hard line on corporate crime.



**EXTRA!!! The Times EXTRA!!!**

**January 14, 2001**  
**Asbestosis: A case of deadly**  
**neglect in Texas**  
**by Rich Oppel**

*It once was easier to identify the villains when workers were harmed.*

In Harlan, Ky., in 1931, the goons were armed deputies who beat striking mine workers. In Hamlet, N.C., in 1991, the villain was the owner of a chicken-processing factory where 25 workers died in a fire locked behind doors.

In Central Texas' asbestos scandal, and it is a scandal, the victims are apparent, but the villains live in the protective shadows of voluntary compliance.

American-Statesman reporter Kevin Carmody powerfully identified the victims last Sunday and Monday.

They are construction workers, many of them undocumented Mexicans hired at day-labor sites, "for the dirty jobs of tearing through old walls, ceilings, pipe insulation or floors" and breathing in an invisible, airborne killer — tiny, stronger-than-steel asbestos fibers.

Texas is proud to be a place where business and industry are encouraged by an atmosphere that limits governmental interference. The unintended consequence, however, is that sometimes the weak are exploited.

Solutions here in Texas are simple and inexpensive.

Federal and state laws now on the books requiring a licensed consultant to survey for asbestos must be enforced consistently. They are not now.

Funding needs to be increased to lift the number of state inspectors from 19 to some level adequate to track down 20,000 illegal cases a year.

The penalties for law-breaking, now limited to fines totaling about \$13,000 for the first offense, must be increased and criminal penalties adopted.

I asked Travis County legislators whether they were ready to act. We publish the edited letters of those who chose to respond on today's editorial page.

**EXTRA!!! The Times EXTRA!!!**

**January 14, 2001**  
**Editorial Section**

*I read the recent stories by Kevin Carmody regarding asbestos removal. I am troubled by the potential for the exploitation of undocumented workers under the current system of regulating asbestos removal.*

Because people are being harmed right now, I am studying the possibility of taking action during this legislative session to increase the penalties for not conducting an asbestos survey. Because these issues are complicated, it might be prudent to examine them in detail during committee hearings to be held in the interim between the current legislative session and the next rather than attempting to quickly enact sweeping legislation that might have unintended consequences. I urge communities to re-examine their policies in light of the apparent success of San Antonio in reducing the rate of illegal asbestos removal.

**SEN. GONZALO BARRIENTOS**  
**D-Austin**

I congratulate Kevin Carmody for a fine piece of investigative journalism in the stories about illegal asbestos removal and the consequences to public health. It comes at a time of rising public concern about indoor air pollutants, including molds, that endanger the health of workers and school children.

You report that there are an estimated 20,000 illegal asbestos removal projects statewide. The public might justifiably ask:

1. Have the construction companies simply disregarded the law and endangered the health of hundreds of construction workers?

2. Have the Texas Department of Health and the federal Occupational Health and Safety Administration failed to adequately enforce the existing regulations?

3. If the City of San Antonio has slashed the number of illegal removals through the permitting process, why shouldn't the Texas Legislature act immediately to require municipalities to conduct asbestos survey checks and increase penalties for failure to notify the Health Department?

I do not know the answer to the first question; my office is investigating the second; and the answer to the third is: "The Texas Legislature should take immediate action." The Department of Health is assembling evidence to present to the Legislature.

**REP. ELLIOTT NAISHTAT**  
**D-Austin**

Any situation that endangers the health and safety of people living and working in Texas is a very serious matter. As a former prosecutor and sheriff, I am committed to the enforcement of local, state and federal laws. Although the public-health issues involved in asbestos abatement and removal are the subject of comprehensive federal regulations, effective enforcement of those regulations requires implementation at both the state and local level. As we work to address environmental health issues this session, I will seek state solutions to facilitate cooperation among local governments and businesses to address this issue.

**REP. TERRY KEEL**  
**R-Austin**

It appears that the City of San Antonio, by requiring documentation of compliance with state and federal asbestos-related laws as part of their construction permitting process, has found a reasonable and effective solution to this problem. I have directed my staff to determine what role the Legislature can take in facilitating implementation of this solution on a statewide basis and to examine other steps that the Legislature should take to eliminate this problem.

**ANN KITCHEN**  
**D-Austin**

Building owners are required to inspect buildings for the presence of asbestos. In the Associated General Contractors' standard contract form, the same is specifically stated. General contractors are responsible for ensuring that an inspection has been performed and no hazard exists before construction starts. Safety is a top priority of AGC members, who give their employees hundreds of hours of comprehensive safety training. Care needs to be taken, however, not to paint all contractors as ones who "out of real or feigned ignorance" fail to comply with the law.

Respectable contractors who demonstrate skill, integrity and responsibility, as is the AGC's motto, do not fall into that category. Some of our members have had their projects delayed for months because they have uncovered instances where abatement surveys had not been performed to ensure safety. They refused to put employees in harm's way.

**JONATHAN R. BETCHER**  
**President & CEO,**  
**Austin Chapter AGC**

**EXTRA!!! The Times EXTRA!!!**

**January 18, 2001**  
**Austin can move on asbestos**

***The Austin City Council need not take a back seat to the Texas Legislature when it comes to worker safety.***

The council can begin work tonight on responding to the exploitation of day laborers, mostly Mexicans, who are being used to strip asbestos illegally from buildings during commercial demolition and renovation projects. While several Texas legislators have said they are committed to closing the gaps in worker-protection laws involving asbestos, City Council members have a job to do locally and shouldn't wait for the Legislature.

The question is who on the City Council will speak up for the laborers among us — the Mexicans who do dirty and dangerous work for which the law promises protection but doesn't deliver?

**EXTRA!!! The Times EXTRA!!!**

**March 13, 2001**  
**Take action now on asbestos relief**

***The Texas Legislature could and should make progress this week to protect construction workers — and the public — from asbestos hazards. Although there is a popular perception that asbestos no longer is used in new construction, the fact is that U.S. imports of asbestos materials doubled between 1989 and 1998, according to the U.S. Environmental Protection Agency.***

State Rep. Garnet Coleman, D-Houston, is asking that the House Public Health Committee give swift approval to bills that would bar contractors from installing products containing asbestos in public and commercial buildings, and require cities to verify that such buildings have been inspected for asbestos before receiving permits for renovation or demolition.

Another bill, sponsored by state Rep. Charlie Geren, R-Fort Worth, would restrict new asbestos use in public building construction. Geren said he filed the bill at the request of Fort Worth school officials, who testified they spent millions to remove asbestos only to have contractors use asbestos materials in new construction.

The House should give swift approval to the legislation filed by Coleman and Geren once the bills clear committee. A companion bill to Coleman's filed by state Sen. Gonzalo Barrientos, D-Austin, was referred to the Senate Commerce Committee. The senate committee should act with dispatch, and both chambers should pass the legislation and send it on to Gov. Rick Perry for his signature.

**EXTRA!!! The Times EXTRA!!!**

**April 13, 2001**  
**A plea for workers**

***In the federal court, at the Legislature and at the Austin City Council, unwitting, exploited workers have the attention of the powerful for the moment. In the halls of these institutions, the powerful are remarking on the abuses and attending to the bureaucratic loopholes that expose construction workers to danger. The actions come too late for the undocumented workers at the abandoned hospital. Their exposure is certain. But the powerful must act for those who follow the metal scrapers into other abandoned commercial buildings in Texas.***

The City Council modeled a successful approach in San Antonio. Austin's new ordinance will require owners of most public or commercial buildings to prove they've had inspections by licensed asbestos consultants before they can get a renovation or demolition permit from the city. State and federal laws require surveys and the safe removal of asbestos, but many building owners have been flouting the rules.

The City Council boldly went further. It made Austin the first city in Texas to bar the installation of asbestos in most commercial buildings. Failure to follow this ordinance or to get the required survey can lead to fines of \$2,000 a day for owners — ironically, the same one-time fee promised to the undocumented workers at the old hospital.

#### **Texas acts**

At the Legislature, lawmakers have further occasion to notice the plight of undocumented laborers. Senate Bill 509 by Sen. Mike Moncrief, D-Fort Worth, won Senate approval and awaits action in the House Public Health Committee, chaired by Rep. Patricia Gray, D-Galveston (463-0588). In the spirit of Austin's ordinance, the bill would prohibit cities from issuing building permits for renovation or demo-

lition of most commercial buildings unless the owner proves an asbestos inspection has been done. Rep. Barry Telford, D-DeKalb, will decide whether House Bill 1279 moves from the House Calendars Committee onto the floor for a vote. (Call him at 463-0692.) That bill would stiffen penalties for improper removal of asbestos flooring. Local Democratic Reps. Elliott Naishtat and Ann Kitchen worked hard on that legislation. Telford also is the gatekeeper for House Bill 1971 by Rep. Domingo Garcia, D-Dallas, to make it a state jail felony for an employer to order an employee to perform unsafe acts, such as asbestos removal without proper safety equipment. The Senate should approve House Bill 1927 by Rep. Charlie Geren, R-Fort Worth, to prohibit installation of materials that contain more than 1 percent asbestos in most new commercial buildings.

For the moment, the people who toil without protection afforded by the law have a chance for more than a raincoat and a wad of cash for their trouble. They are not lesser people because they do the jobs few would want to do. Their lungs are no less valuable than anyone else's in Texas, including the powerful. Contrary to some building owner's views, undocumented workers are not expendable.



*Lawmakers get kicked, prodded, pushed and dissed. Rarely do they get a public thank-you save at a small-town parade or chicken dinner.*

Stop the presses, because the Texas Legislature be praised.

With little dissension and a sense of urgency, lawmakers approved the cornerstone of a package of asbestos safety bills and sent the bill to Gov. Rick Perry on Friday.

Written by Sen. Mike Moncrief, D-Fort Worth, the bill would require cities to

verify that commercial buildings are inspected before asbestos is disturbed. Cities would be prohibited from issuing building permits for renovation or demolition of most commercial structures unless the owner proves they've been inspected for asbestos.

The Senate approved the bill 24-3 last month. The House approved it without debate or dissent last week. Surely, the governor will back it.

Lawmakers haven't finished improving protection for the workers. House Bill 1279 by Coleman to give state officials more authority to issue fines for the improper removal of asbestos flooring is stuck in the House Calendars Committee (Call Rep. Barry Telford, D-DeKalb, at 463-0692 to urge him to let House members vote on it). Senators need to act on the companion bill, Senate Bill 674, by Sen. Gonzalo Barrientos, D-Austin, and on HB 1927 to bar installation of asbestos materials, by Rep. Charlie Geren, R-Fort Worth.

The work is not done, but legislators are well on their way to strengthening protection for workers who, tragically, have been treated as expendable.

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**May 8, 2001  
Asbestos loophole closed**

*Workers who do the dirty and dangerous jobs associated with Texas growth won an important workplace protection from Texas lawmakers and the governor last week.*

Legislators passed and Gov. Perry signed legislation designed to protect construction workers from exposure to cancer-causing asbestos fibers. It was a major victory for workers who normally don't have much clout in the Texas Legislature.

The Texas Legislature and Gov. Perry are to be commended for facing the issue squarely and moving resolutely to close the loophole. By so doing, they moved to protect the public health and to save lives, the highest obligations of public service.



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